

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

**Rule 1004. ~~Partnership Petition~~ Involuntary Petition
Against a Partnership.**

✧ — ~~(a) VOLUNTARY PETITION.~~ A voluntary petition may
+ be filed on behalf of a partnership by one or more general
× partners if all general partners consent to the petition
* ~~(b) INVOLUNTARY PETITION; NOTICE AND SUMMONS.~~
✧ After filing of an involuntary petition under § 303(b)(3) of the
✧ Code, (1) the petitioning partners or other petitioners shall
✧ cause ~~forthwith~~ a copy of the petition to be sent promptly
✧ send to or ~~served~~ serve on each general partner who is not a
✧ petitioner a copy of the petition; and (2) the clerk shall
✧ ✧ promptly issue ~~forthwith~~ a summons for service on each
✧ ✧ general partner who is not a petitioner. Rule 1010 applies to
✧ + the form and service of the summons.

*New material is underlined; matter to be omitted is lined through.

COMMITTEE NOTE

Section 303(b)(3)(A) of the Code provides that fewer than all of the general partners in a partnership may commence an involuntary case against the partnership. There is no counterpart provision in the Code setting out the manner in which a partnership commences a voluntary case. The Supreme Court has held in the corporate context that applicable nonbankruptcy law determines whether authority exists for a particular debtor to commence a bankruptcy case. *See Price v. Gurney*, 324 U.S. 100 (1945). The lower courts have followed this rule in the partnership context as well. *See, e.g., Jolly v. Pittore*, 170 B.R. 793 (S.D.N.Y. 1994); *Union Planters National Bank v. Hunters Horn Associates*, 158 B.R. 729 (Bankr. M.D. Tenn. 1993); *In re Channel 64 Joint Venture*, 61 B.R. 255 (Bankr. S.D. Oh. 1986). Rule 1004(a) could be construed as requiring the consent of all of the general partners to the filing of a voluntary petition, even if fewer than all of the general partners would have the authority under applicable nonbankruptcy law to commence a bankruptcy case for the partnership. Since this is a matter of substantive law beyond the scope of these rules, Rule 1004(a) is deleted as is the designation of subdivision (b).

The rule is retitled to reflect that it applies only to involuntary petitions filed against partnerships.

Changes Made After Publication and Comments. No changes since publication.

Rule 1004.1. Petition for an Infant or Incompetent Person.

- ✧ If an infant or incompetent person has a representative,
- + including a general guardian, committee, conservator, or
- × similar fiduciary, the representative may file a voluntary
- * petition on behalf of the infant or incompetent person. An

† infant or incompetent person who does not have a duly
 † appointed representative may file a voluntary petition by next
 † friend or guardian ad litem. The court shall appoint a
 ☐ guardian ad litem for an infant or incompetent person who is
 + a debtor and is not otherwise represented or shall make any
 ☞ ☞ other order to protect the infant or incompetent debtor.

COMMITTEE NOTE

This rule is derived from Rule 17(c) F.R. Civ. P. It does not address the commencement of a case filed on behalf of a missing person. *See, e.g., In re King*, 234 B.R. 515 (Bankr. D.N.M. 1999).

Changes Made After Publication and Comments. No changes were made.

Rule 2004. Examination

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(c) COMPELLING ATTENDANCE AND

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PRODUCTION OF DOCUMENTS ~~DOCUMENTARY~~

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~~EVIDENCE~~. The attendance of an entity for examination and

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for the production of ~~documentary evidence~~ documents,

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whether the examination is to be conducted within or without

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the district in which the case is pending, may be compelled ~~in~~

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~~the manner~~ as provided in Rule 9016 for the attendance of a

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+ witness ~~witnesses~~ at a hearing or trial. As an officer of the
✧ ✧ court, an attorney may issue and sign a subpoena on behalf of
✧ ✧ the court for the district in which the examination is to be held
✧ + if the attorney is admitted to practice in that court or in the
✧ ✧ court in which the case is pending.

✧ * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to clarify that an examination ordered under Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F.R.Civ.P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F.R.Civ.P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice, even if admitted pro hac vice, either in the court in which the case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F.R.Civ.P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, to ease the burdens of interdistrict law practice.

Changes Made After Publication and Comments. The typographical error was corrected, but no other changes were made.

Rule 2014. Employment of a Professional Person.**

~~(a) APPLICATION FOR AN ORDER OF
 EMPLOYMENT. An order approving the employment of
 attorneys, accountants, appraisers, auctioneers, agents, or
 other professionals pursuant to § 327, § 1103, or § 1114 of the
 Code shall be made only on application of the trustee or
 committee. The application shall be filed and, unless the case
 is a chapter 9 municipality case, a copy of the application
 shall be transmitted by the applicant to the United States
 trustee. The application shall state the specific facts showing
 the necessity for the employment, the name of the person to
 be employed, the reasons for the selection, the professional
 services to be rendered, any proposed arrangement for
 compensation, and, to the best of the applicant's knowledge,
 all of the person's connections with the debtor, creditors, any
 other party in interest, their respective attorneys and~~

** The Advisory Committee on Bankruptcy Rules withdrew proposed amendments to Rule 2014 for further consideration.

✕ ± accountants, the United States trustee, or any person
 ✕ ↑ employed in the office of the United States trustee. The
 ✕ ☐ application shall be accompanied by a verified statement of
 ✕ + the person to be employed setting forth the person's
 + ✕ connections with the debtor, creditors, any other party in
 + ✕ interest, their respective attorneys and accountants, the United
 + + States trustee, or any person employed in the office of the
 + × United States trustee.

+ * (b) SERVICES RENDERED BY MEMBER OR
 + + ASSOCIATE OF FIRM OF ATTORNEYS OR
 + ± ACCOUNTANTS. If, under the Code and this rule, a law
 + ↑ partnership or corporation is employed as an attorney, or an
 + ☐ accounting partnership or corporation is employed as an
 + + accountant, or if a named attorney or accountant is employed,
 × ✕ any partner, member, or regular associate of the partnership,
 × ✕ corporation or individual may act as attorney or accountant so
 × + employed, without further order of the court.

× × (a) APPLICATION FOR ORDER APPROVING
 × * EMPLOYMENT. An application for an order approving the
 × + employment of a professional person under §327, §1103, or

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× ± §1114 of the Code shall be in writing and may be made only
× ↑ by the trustee or committee. The application shall state:

× ☐ (1) specific facts showing why the employment
× + is necessary;

* ☐ (2) the name of the person to be employed and
* ☐ the reasons for the selection;

* + (3) the professional services to be rendered;

* × (4) any proposed arrangement for compensation;
* * and

* ↑ (5) that, to the best of the trustee's or
* ± committee's knowledge, the person to be employed is
* ↑ eligible under the Code for employment for the
* ☐ purposes set forth in the application.

* + (b) STATEMENT OF PROFESSIONAL. The
↑ ☐ application shall be accompanied by a verified statement of
↑ ☐ the person to be employed, made according to the best of that
↑ + person's knowledge, information, and belief, formed after an
↑ × inquiry reasonable under the circumstances, which shall state:

↑ * (1) that the person is eligible under the Code for
↑ ↑ employment for the purposes set forth in the application;

- ⧻ ⧻ _____ (2) any interest that the person holds or represents
- ⧻ ⧻ that is adverse to the estate;
- ⧻ ☐ _____ (3) any interest in, relationship to, or connection
- ⧻ ⧻ the person has with the debtor;
- ⧻ ☑ _____ (4) any interest, connection, or relationship the
- ⧻ ☑ person has that may cause the court or a party in interest
- ⧻ ⧻ reasonably to question whether the person is
- ⧻ ✕ disinterested under § 101;
- ⧻ * _____ (5) any relationship the person has with the United
- ⧻ ⧻ States trustee, or with any employee of the United States
- ⧻ ⧻ trustee, for the region in which the case is pending;
- ⧻ ⧻ _____ (6) the information required to be disclosed under
- ⧻ ☐ § 329(a) if the person is an attorney; and
- ⧻ ⧻ _____ (7) whether the person shared or has agreed to
- ⧻ ☑ share any compensation with any person, other than a
- ⧻ ☑ partner, employee, or regular associate of the person to
- ⧻ ⧻ be employed, and if so, the details.

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*
(c) SERVICE AND TRANSMITTAL OF APPLICATION.

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(1) The applicant shall serve a copy of the application on:

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(A) the trustee;

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(B) the debtor and the debtor's attorney;

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(C) any committee elected under §705 or

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appointed under § 1102, or, if the case is a chapter

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9 case or a chapter 11 case and no committee of

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unsecured creditors has been appointed, on the

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✕
creditors included on the list filed under Rule

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*
1007(d); and

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✕
(D) any other entity as the court may direct.

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(2) Unless the case is a chapter 9 case, the

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applicant shall transmit a copy of the application to the

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United States trustee.

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(d) SERVICES RENDERED BY MEMBER OR

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↗
ASSOCIATE OF FIRM OF EMPLOYED PROFESSIONAL.

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If the court approves the employment of an individual,

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partnership, or corporation, any partner, member, or regular

- + × associate of the individual, partnership, or corporation may
- + * act as the person so employed, without further order of the
- + † court. If a partnership is employed, a further order approving
- + ‡ employment is not required if the partnership has dissolved
- + † solely because a partner was added or withdrew.
- + ☐ (e) SUPPLEMENTAL STATEMENT OF
- + + PROFESSIONAL. Within 15 days after becoming aware of
- ☞ ☞ ☞ any undisclosed matter that is required to be disclosed under
- ☞ ☞ ☞ Rule 2014(b), a person employed under this rule shall file a
- ☞ ☞ + supplemental statement, serve a copy on each entity listed in
- ☞ ☞ × Rule 2014(c), and, unless the case is a chapter 9 case, transmit
- ☞ ☞ * a copy to the United States trustee.

COMMITTEE NOTE

This rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. Professionals seeking court approval of their employment must disclose any interest in, relationship with, or connection to the debtor. The professional also must disclose any interests, relationships, or connections that would cause the court or any party in interest reasonably to question whether the person is disinterested. The rule thus requires the professional to evaluate the need to disclose the information from the perspective of the court and other parties in interest. If the information would cause those persons reasonably to question whether the professional is disinterested, it must be

disclosed. This permits the United States trustee and other parties in interest an opportunity to evaluate whether to oppose the application.

As with any disclosure requirement, the person obligated to make the disclosure must first determine whether the rule requires disclosure of the particular information in question. The information may be so unrelated to the issue that it is unnecessary to make the disclosure. Or, the information may identify a direct connection with an entity other than the debtor, but the connection may be de minimus. In either instance, the professional must make an initial determination whether to investigate for the existence of these connections, and, if they exist, whether there is a need to disclose the connections. Notwithstanding this initial determination by the professional, the court still makes the ultimate determination as to whether the employment is proper under the circumstances. Moreover, since the United States trustee and other parties in interest can be heard on these issues, a professional must not fail to disclose any known or believed connection that reasonably could place into question the professional's disinterestedness.

The rule also sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.

Changes Made After Publication and Comments.

Several comments on the published proposal included concerns that the disclosure standards would be eased under the new version of the rule. While others commented that the proposal would not operate in that manner, the rule was revised to address that issue. Subdivision (b)(3) in the published version of the rule required that the professional disclose any interest, relationship, or connection that

might be relevant to a determination of disinterestedness. That provision is replaced by subdivisions (b)(3) and (4). Subdivision (b)(3) requires the professional to disclose all interests in, connections, or relationships the person has with the debtor. As regards interests, connections, and relationships with persons other than the debtor (or the United States trustee, see subdivision (b)(5)), the disclosure requirement is triggered if the information may cause a court or party in interest reasonably to question the person's disinterestedness.

This change is intended to clarify that the professional making the disclosure must evaluate interests, connections, and relationships from the perspective of the court and other parties in interest. The disclosure obligation must ensure that interested parties have sufficient information to evaluate whether the person is disinterested, and the court must have the information to determine disinterestedness. Thus, even if professionals do not believe that a particular interest, connection, or relationship affects their disinterestedness, they still must disclose the information if it may cause the court or a third party reasonably to question the professionals' disinterestedness.

Subdivisions (b)(4) through (6) are redesignated as subdivisions (b)(5) through (7).

The Committee Note was amended to reflect the changes made in the text of the rule.

Rule 2015. Duty to Keep Records, Make Reports and Give Notice of Case

- 1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A
2 trustee or debtor in possession shall
3 * * * * *
- 4 (5) in a chapter 11 reorganization case, on or
5 before the last day of the month after each calendar

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6 quarter during which there is a duty to pay fees under 28
7 U.S.C. § 1930(a)(6), until a plan is confirmed or the case
8 ~~is converted or dismissed~~, file and transmit to the United
9 States trustee a statement of ~~the~~ any disbursements made
10 during ~~such calendar~~ that quarter and a statement of the
11 amount of the any fees payable under required pursuant
12 to 28 U.S.C. § 1930(a)(6) ~~that has been paid for such~~
13 ~~calendar~~ that quarter.

14 * * * * *

 COMMITTEE NOTE

 Subdivision (a)(5) is amended to provide that the duty to file
quarterly disbursement reports continues only so long as there is an
obligation to make quarterly payments to the United States trustee
under 28 U.S.C. § 1930(a)(6).

 Other amendments are stylistic.

Changes Made After Publication and Comments. No changes
were made.

Rule 4004. Grant or Denial of Discharge.

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2 (c) GRANT OF DISCHARGE

3 (1) In a chapter 7 case, on expiration of the time
4 fixed for filing a complaint objecting to discharge and
5 the time fixed for filing a motion to dismiss the case
6 under Rule 1017(e), the court shall forthwith grant the
7 discharge unless:

8 (A) the debtor is not an individual,

9 (B) a complaint objecting to the discharge
10 has been filed,

11 (C) the debtor has filed a waiver under
12 § 727(a)(10),

13 (D) a motion to dismiss the case under ~~Rule~~
14 ~~1017(e)~~ § 707 is pending,

15 (E) a motion to extend the time for filing a
16 complaint objecting to the discharge is pending,

17 (F) a motion to extend the time for filing a
18 motion to dismiss the case under Rule 1017(e) is
19 pending, or

20 (G) the debtor has not paid in full the filing
21 fee prescribed by 28 U.S.C. § 1930(a) and any
22 other fee prescribed by the Judicial Conference of

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23 the United States under 28 U.S.C. § 1930(b) that is
24 payable to the clerk upon the commencement of a
25 case under the Code.

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 COMMITTEE NOTE

 Subdivision (c)(1)(D) is amended to provide that the filing of a motion to dismiss under § 707 of the Bankruptcy Code postpones the entry of the discharge. Under the present version of the rule, only motions to dismiss brought under § 707(b) cause the postponement of the discharge. This amendment would change the result in cases such as *In re Tanenbaum*, 210 B.R. 182 (Bankr. D. Colo. 1997).

Changes Made After Publication and Comments. No changes were made.

Rule 9014. Contested Matters

1 (a) MOTION. In a contested matter ~~in a case under the~~
2 ~~Code~~ not otherwise governed by these rules, relief shall be
3 requested by motion, and reasonable notice and opportunity
4 for hearing shall be afforded the party against whom relief is
5 sought. No response is required under this rule unless the
6 court ~~orders an answer to a motion~~ directs otherwise.

7 (b) SERVICE. The motion shall be served in the
8 manner provided for service of a summons and complaint by

9 Rule 7004. ~~and, unless the court otherwise directs, Any paper~~
10 served after the motion shall be served in the manner
11 provided by Rule 5(b) F.R. Civ.P.

12 (c) APPLICATION OF PART VII RULES. Unless the
13 court directs otherwise, the following rules shall apply: 7009,
14 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-
15 7056, 7064, 7069, and 7071. An entity that desires to
16 perpetuate testimony may proceed in the same manner as
17 provided in Rule 7027 for the taking of a deposition before an
18 adversary proceeding. The court may at any stage in a
19 particular matter direct that one or more of the other rules in
20 Part VII shall apply. The court shall give the parties notice of
21 any order issued under this paragraph to afford them a
22 reasonable opportunity to comply with the procedures
23 prescribed by the order. An entity that desires to perpetuate
24 testimony may proceed in the same manner as provided in
25 Rule 7027 for the taking of a deposition before an adversary
26 proceeding. The clerk shall give notice to the parties of the
27 entry of any order directing that additional rules of Part VII
28 are applicable or that certain of the rules of Part VII are not

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29 ~~applicable. The notice shall be given within such time as is~~
30 ~~necessary to afford the parties a reasonable opportunity to~~
31 ~~comply with the procedures made applicable by the order.~~

32 (d) TESTIMONY OF WITNESSES. Testimony of
33 witnesses with respect to disputed material factual issues shall
34 be taken in the same manner as testimony in an adversary
35 proceeding.

36 (e) ATTENDANCE OF WITNESSES. The court shall
37 provide procedures that enable parties to ascertain at a
38 reasonable time before any scheduled hearing whether the
39 hearing will be an evidentiary hearing at which witnesses may
40 testify.

COMMITTEE NOTE

The list of Part VII rules that are applicable in a contested matter is extended to include Rule 7009 on pleading special matters, and Rule 7017 on real parties in interest, infants and incompetent persons, and capacity. The discovery rules made applicable in adversary proceedings apply in contested matters unless the court directs otherwise.

Subdivision (b) is amended to permit parties to serve papers, other than the original motion, in the manner provided in Rule 5(b) F.R. Civ.P. When the court requires a response to the motion, this amendment will permit service of the response in the same manner as an answer is served in an adversary proceeding.

Subdivision (d) is added to clarify that if the motion cannot be decided without resolving a disputed material issue of fact, an evidentiary hearing must be held at which testimony of witnesses is taken in the same manner as testimony is taken in an adversary proceeding or at a trial in a district court civil case. Rule 43(a), rather than Rule 43(e), F.R. Civ.P. would govern the evidentiary hearing on the factual dispute. Under Rule 9017, the Federal Rules of Evidence also apply in a contested matter. Nothing in the rule prohibits a court from resolving any matter that is submitted on affidavits by agreement of the parties.

Subdivision (e). Local procedures for hearings and other court appearances in a contested matter vary from district to district. In some bankruptcy courts, an evidentiary hearing at which witnesses may testify usually is held at the first court appearance in the contested matter. In other courts, it is customary for the court to delay the evidentiary hearing on disputed factual issues until some time after the initial hearing date. In order to avoid unnecessary expense and inconvenience, it is important for attorneys to know whether they should bring witnesses to a court appearance. The purpose of the final sentence of this rule is to require that the court provide a mechanism that will enable attorneys to know at a reasonable time before a scheduled hearing whether it will be necessary for witnesses to appear in court on that particular date.

Other amendments to this rule are stylistic.

Changes Made After Publication and Comments:

The Advisory Committee made two changes to subdivision (d) after considering the comments received addressing the proposed rule. First, the word “material” is inserted to make explicit that which was implied in the published version of the proposed rule. Second, the reference to F.R.Civ.P. 43(a) was removed. The purpose of proposed subdivision (d) was to recognize that testimony should be taken in the same manner in both contested matters and adversary proceedings. The revision to the published rule states this more directly.

Subdivision (a)(3) is amended to clarify that if a claim or cause of action is initiated after the commencement of a bankruptcy case, the time limits for filing a notice of removal of the claim or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed.

Changes Made After Publication and Comments: No changes were made.